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Defendants..

# PETITION FOR REVIEW (#5)

Upon review of plaintiff's first "Petition for Review (#1) in this case, it was unclear whether plaintiff intended to file a habeas corpus petition pursuant to 28 U.S.C. § 2242 or a complaint pursuant to the Federal Rules of Civil Procedure. Order (#4). Accordingly, plaintiff's "Petition for Review" (#1)

1 was dismissed without prejudice to cure the deficiencies in his petition and refile it; specifically, the  
2 court noted that plaintiff “fail[ed] to articulate the relief sought and the legal grounds in support  
3 thereof.” Plaintiff was ordered to file either a habeas corpus petition or a complaint by June 19, 2009.  
4 The court warned that failure to do so may result in plaintiff’s case being dismissed.

#### 5 **DISCUSSION**

6 To date, plaintiff has filed neither a habeas petition nor an amended complaint. Instead he filed  
7 another “Petition for Review.” While the second “Petition” (#5) conveys Crain’s deep dismay and  
8 disappointment with the court – particularly with this court’s order to dismiss without prejudice – the  
9 filing is not responsive to this court’s Order (#4). Rather, in expressing his ire with the court, Crain  
10 makes fresh allegations against an entirely different set of individuals than the defendants named in the  
11 caption. The second Petition (#5) doesn’t address, much less cure, the deficiencies in the first Petition  
12 (#1), nor does it even relate to the substance of the first Petition (#1).

#### 13 **RECOMMENDATION**

14 Based on the foregoing, it is the recommendation of the undersigned United States Magistrate  
15 Judge that Steven Crain’s Case No. 09-cv-00283-RCJ-LRL be dismissed with prejudice for failure to  
16 state a cognizable claim.

17 DATED this 9th day of November, 2009.

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20 **LAWRENCE R. LEAVITT**  
21 **UNITED STATES MAGISTRATE JUDGE**  
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